there could have been no verdict for them at any rate. We cannot say that. There was evidence upon the subject which would have justified the jury in finding some part of the money to have been paid by them, and possibly that each paid one-third. We are not called upon to say what the jury ought to have found upon that subject. That there was evidence upon it which would have supported a finding for the appellants in this court, and that it was excluded from their consideration by the charge of the court, that "the defendants have failed to sustain their answer," constitutes error for which we must reverse the decision below.

Supreme Court of New Jersey.

THE STATE EX REL. JOIIN M. PANGBORN ET AL., COMMISSIONERS OF POLICE, *v.* EDWARD F. C. YOUNG, CITY TREASURER.

THE SAME *v.* McMANUS.

The copy of a legislative act, certified by the chairman of each house, signed by the Governor, and filed in the office of the Secretary of State, is the sole and conclusive evidence of the existence and contents of a statute.

The journals of the legislative houses are not competent evidence to show that a copy of a statute, authenticated in the manner above stated, does not contain the whole of the law as, in point of fact, it was enacted.

It is the province of the legislative department to certify, in its own mode, the laws it enacts, and such certificate is conclusive on the other co-ordinate departments of the government.

Such also was the rule at common law.

Jacob Weart and *C. Parker*, for the plaintiff.

Winfield & Bradley, for defendants.

The opinion of the court was delivered by

BEASLEY, C. J.—This controversy relates to an act of the legislature passed on the 23d day of March 1866, entitled "An act to establish a police district in the county of Hudson, and to provide for the government thereof."

The general purpose of this legislative enactment was to abolish the ancient system of police, of which the mayor and other municipal authorities of Jersey City had been the organs, and to transfer the power belonging to that department to a board of three commissioners to be appointed by the Governor, with the consent of the Senate of the state. It is not denied that the rela-

tors are the commissioners, duly chosen and installed into office under this act; the defendants being respectively the treasurer of Jersey City and the chief of police under the old organization.

By the 16th section of the act in question, the commissioners are authorized to pay all claims arising under its provisions by checks drawn in a mode which is prescribed, on the treasurer of Jersey City. Sundry checks have been issued by the board of commissioners to pay debts by them officially contracted, payment of which, when presented, was refused by the treasurer of the city. This is the transaction which forms the basis of the application for the *mandamus* in the case first above stated; the alleged necessity for the *mandamus* in the second case arises from the refusal of Mr. McManus, who was the chief of the police in the old system, to obey the orders of the new board of commissioners, and to deliver to them "the books, papers, and property" belonging to the police department, according to the requirements of the 23d section of the act above referred to.

Besides certain technical matters which will be noticed hereafter, the defendants have interposed as a defence in both these cases the objection that the act of the legislature creating the relators a board of police was not enacted in conformity to the requirements of the constitution of this state, and on that account is illegal and altogether void. This allegation is founded in certain facts which, it is alleged, appear upon the journals of the Senate and House of Assembly. From an inspection of these journals it appears that the act under consideration originated in the lower house, through which it passed in the usual form; that upon its transfer to the Senate it received in that body certain important amendments, and in that altered condition was returned to the Assembly, which, concurring in the amendments, adopted and passed it as in ordinary cases. It is further alleged that this bill, as modified by the Senate, was never presented to the Governor for his approval, and is not the bill which has received the executive sanction, and which is now deposited in the office of the Secretary of State. It is insisted that by a mistake, which is not explained, the bill as it originally passed the House of Assembly, and before the introduction of amendments by the Senate, was certified to by the speaker of each house, and is the act now on file in the office of the Secretary of State, bearing the signature of the executive. Upon this state of facts it is insisted

that the amended bill which was adopted by both houses has never received the approval of the Governor, which, being a constitutional requisite, cannot be dispensed with, and that the bill to which the Governor's signature is annexed was not the act which, in point of fact, was passed into a law by the vote of the Senate, and that as an unavoidable consequence, neither bill is to be regarded as a legislative act which is enforceable by the courts. It is not in the least to be doubted that on the assumption of the truth of these premises, the conclusion thus drawn is correct. A legislative bill which wanted the approval of either the Assembly or the Senate, or that of the Governor, would be so plainly defective, on constitutional grounds, that this court could not hesitate, in the exercise of its clearly legitimate power, in declaring it absolutely void. Such, indeed, in the argument, was not denied to be the inevitable result, as an induction of law, if the facts above stated were to be received and considered by the court. The entire controversy, and the learned discussion at the bar which followed, and which has so materially assisted the labors of the court, turned upon another point, which was, the very important question whether the court, under its admitted power to inform itself with regard to the existence of the general laws of the state, was authorized to go behind the copy of a legislative act on file in the office of the Secretary of State, and which is authenticated with the usual solemnities. It will be at once perceived that this is a topic of much delicacy and of great moment, for it relates to the right of the judiciary to institute its own modes of inquiring into the action of the legislative department of the government, as well as to the exercise of its authority, based upon such an inquiry, to restrain such department within constitutional limits. The subject has received that careful consideration at the hands of the court which was due to a matter involving such important legal principles and affecting such high public interests.

From the foregoing statement it is apparent that the investigation before the court belongs entirely to that branch of legal science which embraces and illustrates the laws of evidence. The precise point to be considered is thus advanced in the arguments of counsel: On the part of the plaintiff it is maintained that the act as found in the office of the Secretary of State, exemplified under the great seal, is conclusive evidence of the existence and

contents of the statute ; while, on the other hand, it is urged, that when a doubt arises, or is suggested, whether in the passage of the act, the substantial forms of the constitution have been observed, the court will satisfy itself on these points by a reference to the journals of the two houses of the legislature. In order clearly to comprehend these opposing positions it is necessary to understand, with clearness, what the instrument of evidence is, which, by the one party, is asserted to have the effect to forbid all ulterior inquiry, as well as that other instrument to which, by the other party, it is insisted the court, under proper circumstances, has the right to revert. First, then, as to the copy of the act on the files of the office of the Secretary of State.

From the earliest times, so far as I have been able to ascertain, it has been the invariable course of legislative practice in this state for the speaker of each house to sign the bill as finally engrossed and passed. This bill, thus attested, is then presented to the Governor, and if approved of by him is authenticated by his signature. It is likewise certified by indorsement by the clerk of the house in which it originated. With these attestations of authenticity upon it, it is then filed in the office of the Secretary of State. This has been the course of proceeding from certainly a very remote period to the present time. There seems, therefore, to be no doubt whatever that these copies, thus authenticated and filed, are to be regarded as enrolled bills, corresponding in their general character, and partaking, if not in all, at least in most respects, of the nature of parliamentary rolls. In the statute book they are frequently referred to as enrolled bills, and if we go back to early times we find, indorsed upon these copies with the executive approval, a direction to enroll them—which meant nothing more than that they were to be filed. These are the characteristics and nature of the copies of legislative bills deposited, according to the ordinary routine, in the office of the Secretary of State.

Next, then, with regard to the journals of the two houses of the legislature. Each house keeps one of these memorials by the express injunction of the constitution. The provision is found in article iv., § 4, par. 4. Its language is: "Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house on any question, shall at the desire of one-fifth of those present, be

entered on the journal." And by the last clause of paragraph 6th, in the same section, it is further directed, with regard to the form of enacting bills, "that the yeas and nays of the members voting on such final passage shall be entered on the journal." These are all the constitutional requirements relating to these diaries; and it will be observed that with the exception of recording the yeas and nays, on certain occasions, there is no prescription in the constitution of what they shall contain. They are not required to be attested in any way whatever; nor is it said that they shall even be read over to the house, so that their correctness may stand approved.

From this comparison, it seems to me, it is impossible for the mind not to incline to the opinion that the framers of the constitution, in enacting the keeping of these journals, did not design to create records which were to be paramount to all other evidence with regard to the enactment and contents of laws. At the time of the formation of the constitution the mode of authenticating statutes, by a copy enrolled in the office of the Secretary of State, was completely established by common usage, and by the sanction of its antiquity, and it was also obvious that a copy of an act thus enrolled was, in every essential particular, almost identical with a roll of Parliament, which, it was well known, was not only admissible in evidence but was conclusive as to the existence and provisions of the law which it embodied. Possessed of this knowledge, it is difficult to believe that the eminent jurists who, as delegates, helped to frame the constitution of 1844, meant to substitute a journal, which was devoid of all the ordinary marks of authenticity, considered as a means of proof in a court of law, for a record which in point of evidential efficacy had no superior. If intended as evidence for any purpose whatever in any course of judicial investigation, can any one conceive that these registers would have been left in the condition in which, by the constitution, we find them? In the nature of things they must be constructed out of loose and hasty memoranda made in the pressure of business and amid the distractions of a numerous assembly. There is required not a single guarantee to their accuracy or to their truth; no one need vouch for them, and it is not enjoined that they should be either approved, copied, or recorded. It must be admitted, I think, from these considerations, that a strong presumption arises that it was not the purpose of those who framed the constitution, in enjoining each house to keep a journal, to

establish such journals as the ultimate and conclusive evidence of the conformity of legislative action to constitutional provisions in the enactment of laws.

But, independent of this question of intention, as exhibited in our primary law, the more general inquiry arises,—can the court resort to this source of information to satisfy itself on the point whether a legislative act has been thus constitutionally passed?

The first consideration which naturally suggests itself, in this connection, is, that the legislature has with care, and a wise precaution, adopted a mode of certifying its own acts in an authentic form. And, indeed, so completely has this purpose been effected that it appears hardly practicable to suggest additional safeguards. To the correctness of the present bill, for example, we have the signature of the presiding officer of each house. In its present form it was exhibited to the Governor as the bill which had been enacted, and as such received his approval, as is evidenced by his signature. It was then immediately made public by being filed in the office of the Secretary of State. These are the sanctions which the legislature has provided for the authentication of their own acts, both to the public and to the judicial tribunals—and the question is therefore presented whether such authentication must not be deemed conclusive, or, in other words, whether the legislature does not possess the right of declaring what shall be the supreme evidence of the authenticity of its own statutes? This question, in my opinion, must be answered in the affirmative. How can it be otherwise? The body that passes a law must of necessity promulgate it in some form. In point of fact the legislative power over the certification of its own laws is, of necessity, almost unlimited, as will appear from the circumstance that with regard to the body of an act there is no evidence of any kind but that which the legislature itself furnishes in the copy deposited in the state archives. The journals do not purport to contain more than the amendments, so that the legislative control is absolute with regard to the essential parts of most of the laws which are enacted. We are also to reflect that it is the power which passes the law which can best determine what the law is which itself has created. The legislature in this case has certified to this court, by the hands of its two principal officers, that the act now before us is the identical statute which they approved, and, in my opinion, it is not competent for this court

to institute an inquiry into the truth of the fact thus solemnly attested.

Nor do I think this result is to be deprecated. I think the rule thus adopted accords with public policy. Indeed, in my estimation, few things would be more mischievous than the introduction of the opposite rule. A little reflection will satisfy most persons of the truth of this remark. Let us examine the proposition in a few words.

The rule contended for is, that the court should look at the journals of the legislature to ascertain whether the copy of the act attested and filed with the Secretary of State conforms in its contents with the statements of such journals. This proposition means, if it has any legal value whatever, that in the event of a material discrepancy between the journal and the enrolled copy, that the former is to be taken as the standard of veracity, and the act is to be rejected. This is the test which is to be applied not only to the statute now before the court, but to all statutes; not only to laws which have been recently passed, but to laws the most ancient. To my mind nothing can be more certain than that the acceptance of this doctrine by the court would unsettle the entire statute law of the state. We have before us some evidence of the little reliability of these legislative journals, to which, in this place, it is well to advert. This reference should be premised with the remark that an examination of the journals alluded to in the evidence revealed the fact they were made up of entries partly in pencil, partly in ink, and of scraps in print taken from newspapers. The witness, in the testimony above mentioned, says: "I have examined these portions of the Senate journal relating to the police bill. With *two exceptions* they show the amendments that were added to that bill in the Senate as it came from the Assembly." "These amendments having been agreed to without objection were not inserted in the journal, it not being usual to insert amendments in the journal except when the yeas and nays were called, or the *bill or amendments were of some particular importance.*" And again, the witness says: "It is quite an usual thing to dispense with the reading of the journal in the Senate." Hence it appears that these journals do not contain amendments not objected to, and which the clerk deems of little importance, and that in the ordinary course they are frequently not even submitted for approval to the body whose

acts they purport to record. Evidence which would seem less reliable it is hardly possible to present to the legal mind; it has not one of the guarantees, which, even in the most ordinary transactions, are required to raise a presumption in favor of testimony. Can any one deny that if the laws of the state are to be tested by a comparison with these journals—so imperfect—so unauthenticated—that the stability of all written law will be shaken to its very foundations? Certainly no person can venture to say that many of our statutes, perhaps some of the oldest and most important, those which affect large classes of persons, or on which great interests depend, will not be found defective, even in constitutional particulars, if judged by this criterion. The misplacing of a name on a nicely-balanced vote might obviously invalidate any act: what assurance is there, therefore, that a critical examination of these loosely-kept registers will not reveal many fatal errors of this description? In addition to these considerations, in judging of consequences, we are to remember the danger, under the prevalence of such a doctrine, to be apprehended from the intentional corruption of evidence of this character. It is scarcely too much to say that the legal existence of almost every legislative act would be at the mercy of all persons having access to these journals, for it is obvious any law can be invalidated by the interpolation of a few lines, or the obliteration of one name and the substitution of another in its stead. I cannot consent to expose the state legislation to the hazards of such probable error or facile fraud. The doctrine contended for on the part of the defence has no foundation, in my estimation, in any considerations of public policy.

The principal argument in favor of this judicial appeal from the enrolled law to the legislative journal, and which was much pressed in the discussion at the bar, was, that the existence of this power was necessary to keep the legislature from overstepping the bounds of the constitution. The course of reasoning urged was, that if the court cannot look at the facts and examine the legislative action, that department of government can at will set at defiance, in the enactment of statutes, the restraints of the organic law. This argument, however specious, is not solid. The power thus claimed for the judiciary would be entirely inefficacious as a controlling force over any intentional exorbitance of the law-making branch of the government. If we may be per-

mitted, for the purpose of illustration, to suppose the legislature to design the enactment of a law in violation of the principles of the constitution, a judicial authority to inspect the journals of that body would interpose not the slightest barrier against such transgression, for it is obvious that there could not be the least difficulty in withholding from such journals every fact evincive of such transgression. A journal can be no check on the actions of those who keep it, when a violation of duty is intentional. It cannot, therefore, fail to be observed how inadequate to the correction of the supposed evil is the proposed remedy. Besides, if the journal is to be consulted on the ground of the necessity of judicial intervention, how is it that the inquiry is to stop at that point? In law, upon ordinary rules, it is plain that a journal is not a record, and is therefore open to be either explained or contradicted by parol proof. And yet is it not evident that the court could not, upon the plainest grounds, enter upon such an investigation? In the case now in hand, if the offer should be made to prove, by the testimony of every member of the legislature, that the journals laid before us are false, and that, as a matter of fact, the enrolled law did receive, in its present form, the sanction of both houses, no person versed in jurisprudence, it is presumed, would maintain that such evidence would be competent. The court cannot try issues of fact; nor, with any propriety, could the existence of statutes be made dependent on the result of such investigations. With regard to matters of fact, no judicial unity of opinion could be expected, and the consequence would necessarily be that the conclusion of different courts, as to the legal existence of laws, from the same proofs, would be often variant, and the same tribunal which to-day declared a statute void, might to-morrow be compelled, under the effect of additional evidence, to pronounce in its favor. The notion that the courts could listen upon this subject to parol proof, is totally inadmissible; and it therefore unavoidably results, that if the journal is to be taken into consideration at all, its effect is uncontrollable: neither its frauds can be exposed nor its errors corrected. And if this be so, and the journal is to limit the inquiry of the judicial power, how obvious the inadequacy, if not futility of such inquiry. In my estimation the doctrine in question, if entertained, would, as against legislative encroachments, be useless as a guard to the constitution, and it certainly would be attended

with many evils. Its practical application would be full of embarrassment. If the courts, in order to test the validity of a statute, are to draw the comparison between the enrolled copy of an act and the entries on the legislative journal, how great, to have the effect of exploding the act, must be the discrepancy between the two? Will the omission of any provision, no matter how unimportant, have that effect? The difficulty of a satisfactory answer to these and similar interrogatories is too apparent to need comment. And again, to notice one among the many practical difficulties which suggest themselves, what is to be the extent of the application of this doctrine? If an enrolled statute of this state does not carry within itself conclusive evidence of its own authenticity, it would seem that the same principle must be extended to the statutes, however authenticated, of other states. An act, therefore, of Virginia or California, with regard to the mode of its enactment, would be open to trial as a matter *in pais*. And indeed the doctrine, if carried to its legitimate conclusion, would seem to abolish altogether the conclusiveness even of international authentications—for if the great seal of this state, attesting the existence of a statute is not final, it is not perceived how a greater efficacy is to be given to the seal of a foreign government.

In addition to the foregoing observations, I cannot close this part of my examination of the question under discussion without adverting to a further consideration which, to my mind, appears to be entitled to very great if not decisive weight. I here allude to the circumstance that in the structure of the government of this state, the judicial and legislative departments are made co-equal, and that it nowhere appears that the one has the right of supervision over the other. It is true, as was much pressed on the argument, that the legislative branch may wilfully infringe constitutional prescriptions. But the capacity to abuse power is a defect inherent in every scheme of human government, and yet, nevertheless, the forces of government must be reposed in some hands. The prerogatives to make, to execute, and to expound the laws must reside somewhere. Depositaries of these great national trusts must be found, though it is certain that such depositaries may betray the confidence thus reposed in them. In the frame of our state government the recipients and organs of this threefold power are the legislature, the executive, and judiciary,

and they are co-ordinate—in all things equal and independent. Each within its sphere is the trusted agent of the public. With what propriety then is it claimed that the judicial branch can erect itself into the custodian of the good faith of the legislative department? It is to be borne in mind that the point now touched does not relate to the capacity to pronounce a law which it admitted to have been enacted, void by reason of its unconstitutionality: that is clearly a function of judicature. But the proposition is, whether when the legislature has certified to a mere matter of fact relating to its own conduct, and within its own cognisance, the courts of the state are at liberty to inquire into or dispute the veracity of that certificate? I can discover nothing in the provisions of the constitution, or in the general principles of government, which will justify the assumption of such superior authority. In my opinion the power to certify to the public the laws itself has enacted, is one of the trusts of the constitution to the legislature of the state.

Neither do I think, if we turn from these general considerations to regard judicial sentiment and the authority of decided cases, that we are led to any other conclusion than the one above expressed. A brief reference to a few of the more important of the decisions will, I think, justify this opinion.

In England the legal principle upon the point now presented for the first time to this court, appears to have been entirely at rest from an early day. The leading case in that country is that of *Rex* v. *Arundel*, reported by Lord HOBART, p. 110; and the remarkable similarity between the question involved in the controversy there reported and the one now before us for decision should not escape observation. The facts were the following, viz.: It appeared that a bill had passed the upper House by the consent of the Lords, and had been sent to the lower House, and from thence had been returned with a certain proviso annexed to it. This bill was filed with the rest of the bills, and was marked with the royal assent. As this was a private bill it was not enrolled in the Court of Chancery, as was the usage with acts of a public nature. The attempt on the trial in the Court of Chancery was to show by the journal of the upper House that the *proviso which was omitted in the copy filed* had been passed as a part of the bill. Then, as in the principal case, the question was upon the point of the admissibility of the parliamentary

journal to impeach the bill on the files, on the ground that the latter did not contain all the provisions which had received the sanction of one of the Houses; but the court resolved that the journal could not be used as evidence for that purpose. And the distinction is drawn, in the clearest manner, between an infirmity appearing in the act itself, as where it purported to have been passed without the concurrence of the Commons, and a defect revealed only by the journal; the former being regarded as an incurable imperfection; the latter, as an objection impossible, according to the laws of evidence, to be proved. This doctrine, which is founded on the still earlier decisions reported in the Year-Books, has been, I am satisfied, the undisputed law of the English courts from that day to the present. It has received the sanction of Lord COKE (the case of heresy, 12 Rep. 58), and the principle was carried so far by Lord HALE, that in a case where the defendant pleaded that a bill wanted the royal assent, he would not permit the question to be raised, but held that the certificate of the bill from the Court of Chancery, where it had been recorded, was conclusive: *College of Physicians and Cooper* v. *Herbert*, 3 Keb. 587. Nor can it I think be denied that a statute properly attested by seal, everywhere in the common law, is regarded as a method of evidence, equal and equivalent to the copy of a judgment formally exemplified. They each import absolute verity; to neither can the plea of *nul tiel record* be applied; their existence and contents can be tried only by inspection. No English judge, as far as I am aware, has ever dropped a hint that as an instrument of evidence a statute does not stand on the same level with a judgment. I think all persons must admit that this is the rule of the common law. How is it then that this court is to dispense itself from the enforcement of this rule, so clearly established and so ancient. But one suggestion in this respect was made by counsel, and that was that the English rule was not applicable to the present condition of affairs here, growing out of the written constitution of this state. But I cannot perceive the force of this argument. The constitution of this state, it is true, requires each house of the legislature to keep a journal of its proceedings; but, as already remarked, neither by expression nor by implication is such journal made evidence in so supreme a degree that it can be used to annul or impeach a record. Besides, by prescription and immemorial

usage, journals of its proceedings are kept by Parliament, and which, for certain purposes, have always been recognised by the courts, and there seems to be no reason whatever to hold that, considered as means of proof in any court of law, such journals occupy a rank inferior to those which are kept by the legislature under the direction of the constitution of this state. I see nothing in this particular which will prevent the application of the rule of the common law to this case. Nor do I think there is anything which will produce a different result in the fact that in this state the legislature is constrained to enact laws in the modes marked out in a written constitution. The Parliament of England is not possessed of arbitrary powers; it is as incapable as our own legislature of passing a law except in a certain definite and prescribed form. A statute which had not received the approval of either house, or of the executive, would be void alike in Great Britain and in this state. The difference is simply between restrictions upon the law-making power established by usage and those committed to writing; a difference which does not seem to affect, in any substantial manner, the question of evidence now considered. The same common-law principle which gives the quality of conclusiveness to a parliamentary roll, must therefore, as a part of the unquestionable law of this state, and which this court has no choice but to enforce, impart the same force to an enrolled act of the legislature of this state.

My general conclusion then is, that both upon the grounds of public policy and upon the ancient and well-settled rules of law, the copy of a bill attested in the manner above mentioned, and filed in the office of the Secretary of State, is the conclusive proof of the enactment and contents of a statute of this state; and that such attested copy cannot be contradicted by the legislative journal, or in any other mode.

In conformity with the foregoing view I regard the decided weight of American authority. It is not deemed necessary to review the cases. The following will be found to support substantially the conclusion above expressed: *The Pacific Railroad Co.* v. *The Governor*, 23 Missouri 353; *Fouke* v. *Fleming*, 13 Md. 412; *Duncombe* v. *Prindle*, 12 Iowa 1; *Peo* v. *Purdy*, 2 Hill 31; s. c. 4 Id. 384; *Eld* v. *Gorham*, 20 Conn.

On the argument of these cases the further ground was assumed that neither of them was of such a character as to warrant the

use of the writ of *mandamus*. But the court cannot concur in this view. In the one case the writ is asked to compel the chief of police to submit to the authority of the board of commissioners, and to deliver up to them certain property to which, by force of the statute, they are entitled; and in the other case the intervention of this court is sought to require the city treasurer to honor the drafts of the commissioners, in obedience to the same law. In such case the application is to this court for its prerogative writ to constrain a public officer to discharge a duty incident to his office, which is in no degree discretionary, and for the breach of which there is no other specific or adequate remedy. Each case appears to come clearly within the office of the *mandamus:* 8 Mod. 28; Bac. Abr. tit. *Man. C. D.; Rex* v. *Buller*, 8 East 388; *Rex* v. *Gravesend*, 2 B. & C. 602.

Let the writs issue according to the application.

Circuit Court of the United States. Fourth Circuit, District of Maryland.

OWNERS OF THE MARY WASHINGTON *v.* AYRES *et al.*

The duty of a carrier by water is not fulfilled by simple transportation from port to port. The goods must be landed and the consignee notified of their arrival.

Where goods were landed from a vessel and stored in the carrier's storehouse until the consignee should call for them, but no notice of their arrival was given him, proof that such was the carrier's general custom will not relieve him from liability for damage to the goods after such storage, unless there is proof of agreement by the owners to such arrangement.

A contract of affreightment to be performed upon tidal waters or navigable rivers wholly within the limits of a state, is a maritime contract within the admiralty jurisdiction of the courts of the United States.

APPEAL from the District Court in Admiralty.

The appellants, who were respondents below, agreed with the appellees, who were libellants, for certain compensation which was paid, to convey on their steamer certain merchandise from Baltimore to Hill's Landing, on the Patuxent river, and to deliver it there to Pumphrey. The merchandise was accordingly conveyed to respondents' wharf, at Hill's Landing, and Pumphrey not being there to receive it, was placed in their warehouse connected with the wharf. This warehouse was kept for the accom-